

must, primarily, be measured by the price obtained by that willing vendor. In other words, the price obtained by the willing vendor from the willing purchaser at a recent sale of land must be the best evidence of the "market value" of the identical land at the date of its acquisition.

Under section 33(1)(a) the Collector and the Board are obliged to arrive at the "market value" as at November 30, 1973, or as at the date of the publication of the notification under section 3(1) if the notification is within six months from the date thereof followed by a declaration under section 5 in respect of the same land, or as at the date of the publication of the declaration under section 5, whichever is the lowest. In all cases, therefore, of land acquired under the Act, where there has been a willing vendor, willing purchaser sale of the identical land shortly before or after November 30, 1973, the price obtained by that willing vendor would primarily be the "market value" of the land for the purpose of determining the amount of the compensation to be awarded unless there is evidence that its "market value" at the date of the section 3(1) notification or the section 5 declaration as the case may be is lower than its market value as at November 30, 1973.

In the present case No. 92 High Street was acquired pursuant to a section 5 declaration published on November 9, 1974. There is no evidence that its "market value" at that date was lower than its "market value" as at November 30, 1973. It was purchased by the appellant on a willing vendor, willing purchaser basis under an option exercised in November 1973 with completion in March 1974 at the price of \$750,000.00. The Board, as appears from the oral judgment which we have earlier set out, rejected the appellant's purchase of the land as a comparable because it found that the appellant had paid a "special price" for the land and because the undisputed evidence before it was that "there are occasions where sitting tenants would pay as much as and sometimes more for a property than an outsider will pay to get possession."

We have scrutinised closely the evidence and it is plain that there was no evidence to justify these findings of the Board. Indeed, the evidence was the other way. The appellant did not pay a "special price" when he purchased the property in November 1973. The price he paid was, clearly on the evidence, a price which the vendor could reasonably expect to obtain from any willing purchaser and which the appellant, as a willing purchaser, would reasonably expect to have to pay to the owner as a willing vendor.

The expert witness, a qualified valuer, called by the appellant, when cross-examined, disagreed with the suggestion that there was not much difference between the price which a sitting tenant would be willing to pay and the price which non-sitting tenant would pay to get vacant possession. In our opinion it is a self-evident fact, for which no evidence need be called, that the market value of rent controlled property which is tenanted is appreciably lower than its market value if it is not tenanted. The reason is because the owner cannot reasonably expect to obtain the price for his property if he sells it without vacant possession that he would obtain if he sells it with vacant possession.

In these circumstances the award of the Board cannot

stand and we substitute therefore an award of \$750,000.00. The respondent will have to pay the costs of the appeal and of the proceedings before the Board.

Appeal allowed.

Solicitors: *L.A.J. Smith; Karthigesu & Arul*

**THE "ENFIELD";
BARBURY (PANAMA) S.A. & ANOR. v.
CROSSOCEANIC NAVIGATIONAL
SERVICES PTE. LTD.**

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai
Kew Chai JJ.) May 28, 1982]
[Singapore - Civil Appeal No. 29 of 1981]

Shipping Law - Arrest of ship - Dispute as to ownership - Sale of vessel to another was a sham - High Court (Admiralty Jurisdiction) Act (Cap.6), s. 4(4) (1) (a).

On May 15, 1980 the respondents arrested M.V. "Enfield" of Panama as security for their claim of disbursement which they had incurred as owner's agents in Madras in February, March, and April 1980. The appellants sought to set aside the said writ and contended that the ownership of the vessel had been transferred to Barbury (Panama) S.A. (Barbury). The appellants therefore claimed that the requirements of s. 4(4) (1) (a) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) had not been complied with. The learned Judge dismissed the appellants' application and the appellants appealed.

Held, dismissing the appeal: (1) the purported sale of the vessel by Enfield Shipping Corporation S.A. to Barbury was a device and a sham designed to defraud claimants such as the respondents so that the vessel as a security was put out of their reach;

(2) the court is entitled to look at the transactions and determine the true beneficial ownership of the vessel;

(3) the evidence amply confirmed that Barbury did not carry the true face of a corporate *bona fide* purchaser and that the Enfield Shipping Corporation S.A. (the second appellants) were at all material times the beneficial owners of the vessel.

Cases referred to:-

(1) *The Monica S* [1967] 2 Lloyd's L.R. 113, 132.

(2) *The Aventicum* [1978] 1 Lloyd's Rep. 184.

(3) *The Maritime Trader* [1981] 2 Lloyd's Rep. 153, 156-7.

HIGH COURT.

S. Selvadurai for the plaintiff.

Lo Kok Siong for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The two motions before the Court by the Defendants are to set aside the writ *in rem* and all subsequent proceedings for want of jurisdiction *in rem*.

The facts are briefly as follows:-

The Plaintiffs are ship agents in Madras and were at all material times the Defendants' agents in respect of their vessel "ENFIELD" of the Port of Panama at the Port of Madras with authority from the owners to appoint sub-agents in Colombo during the months of February, March, April and part of May 1980.

The claim of the Plaintiffs is for disbursements made and/or liabilities incurred for and on account of the said vessel and/or on behalf of the Defendants, their servants or

agents. The vessel called at the Port of Singapore on May 14, 1980 and the Plaintiffs arrested the said vessel the following day, i.e. May 15, 1980.

The arrest was effected pursuant to the High Court Admiralty Jurisdiction Act (Cap. 6). The Defendants contend that the arrest is wrongful and they have moved this Honourable Court to set aside the arrest and all proceedings thereunder on the grounds that the action did not fall within the ambit of the Act which empowers the court to exercise admiralty jurisdiction.

Now section 3(1) of the said Act (Cap. 6) reads as follows:—

"3. (1) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:

- (a)
- (b) any claim by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship."

Section 4(4) of the said Act states as follows:—

"4. (1) In the case of any claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

- (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or
- (b) ...

According to the Affidavit of Richard Hwa Eng Lai dated 22.5.80 Ganry Line of which he is the manager purchased the ship "Enfield" from Enfield Shipping Corporation on the 7.2.80. On the 15.3.80 Ganry Line relinquished its rights to the Enfield under an agreement date 7.2.80 in favour of Barbury Panama S.A. On the same day Enfield Shipping Corporation executed a memorandum of agreement selling the "Enfield" to Barbury Panama S.A. These three companies namely Enfield Shipping Corporation, Barbury Panama S.A. and Ganry Line are the ones involved with the vessel "Enfield". For the Plaintiffs to succeed according to the Judgment of Brandon J. in the *Monica S*⁽¹⁾, two requirements must be fulfilled:—

- (1) the first requirement is that a person who would be liable on the claim *in personam* should have been the owner, or charterer of, or in possession or control of, the ship when the cause of action arose; and
- (2) the second requirement is that at the time when the action is brought, the ship should be beneficially owned as respects all shares in it by that person (that person refers to the person who would be liable *in personam*).

In order to satisfy the first requirement, the Plaintiffs must show that the person liable to a claim *in personam* should be the owner or charterer or in possession of or in control of the vessel. It is most difficult to resolve this dispute on the question by affidavits alone because the affidavits are inconsistent, sometimes contradictory but "on the balance of probabilities" as Slynn J. said in "*The Aventicum*"⁽²⁾ there is without a shadow of doubt that Richard Hwa owned all the three companies abovementioned and manipulated them. The following are excerpts

- A from the various affidavits filed in these proceedings:—
- (1) The principal shareholder and managing director of Ganry Line was Richard Hwa;
- (2) The officers of Barbury are
 - (a) Madam Ng Law Lee, President/Director who is the mother of Richard Hwa;
 - (b) Tan Han Tuan, Treasurer/Director;
 - (c) Madam Chia Lay Ah, Secretary/Director who is the wife of Richard Hwa.

In the Exhibit P1 to the Affidavit of Mr. S. Selvadurai dated 24.6.80 Richard Hwa is purported to be the President of Barbury Panama S.A. and even signed the Memorandum of Agreement dated 15.4.80 as President of Barbury Panama S.A.

- C (3) In the Memorandum dated 15.4.80 the partner sole proprietor of Barbury Panama S.A. is one Ng Law Lee of Apartment Block 4, 17-R Tanjong Pagar Plaza, Singapore;
- (4) In the Affidavit of S. Selvadurai dated 24.6.80 at page 11, Richard Hwa is alleged to have told Capt. Menon that Enfield Shipping Corporation was a paper company belonging to him and that he intended to transfer the ship to another company;
- (5) In the Affidavit of Quah Imm Huat dated 22.5.80 the directors and shareholders of Barbury Panama S.A. are Ng Law Lee, Tan Han Tuan and Chia Lay Ah; Ng Law Lee is the mother of Richard Hwa and Chia Lay Ah is his wife. They purchased the said company on or about the 10.3.80 through Memorandum Enterprise Company. In the same affidavit at page 3, Quah Imm Huat states "Ganry Line took delivery of the Enfield towards the end of February 1980 and traded with her in its own right until her return to Singapore on the 14.5.80".

Taking all the above into consideration, one arrives at the irresistible conclusion that Richard Hwa is the person *in personam* who controls all the three companies and therefore the vessel "Enfield" is beneficially owned as respects all the shares therein by Richard Hwa.

- F I am satisfied on a balance of probabilities from the evidence that Richard Hwa was the owner of the vessel at the time the cause of action arose and is also the person who at the time the proceedings commenced beneficially owned all the shares in the vessel. Such being the case the requirements of section 4(4) Cap. 6 have been complied with and in the circumstances the two motions are dismissed with costs.

Motions dismissed.

(The defendants appealed against the above Judgment)

COURT OF APPEAL.

- I S. Selvadurai for the appellants/defendants.
Lo Kok Siong for the respondents/plaintiffs.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): On May 15, 1980 the Respondents arrested motor

vessel "Enfield" of Panama in these admiralty proceedings as security for their claim of US\$47,437.89 for disbursements which they had incurred as owner's agents in Madras in February, March and April 1980. In the affidavit leading to the warrant of arrest, it was deposed that Enfield Shipping Corporation S.A. was the owner of the vessel at the time the causes of action had accrued and at the date of the Writ of Summons. This assertion was based on the records of the Panamanian ships' registry and Lloyd's Register of Shipowners 1979/1980.

By two motions filed on May 20, 1980 and October 8, 1980, the Appellants applied to set aside the Writ and all proceedings thereunder on the ground that since the accrual of the causes of action, the ownership of the vessel has been transferred to Barbury (Panama) S.A. (hereinafter referred to as "Barbury") with the result that the requirements of sub-section 4(4) (1) (a) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) were not complied with. The learned Judge dismissed both the motions with costs. After reviewing the affidavit evidence, he said:

"Taking all the above into consideration, one arrives at the irresistible conclusion that Richard Hwa is the person *in personam* who controls all the three companies and therefore the vessel "Enfield" is beneficially owned as respects all the shares therein by Richard Hwa.

I am satisfied on a balance of probabilities from the evidence that Richard Hwa was the owner of the vessel at the time the cause of action arose and is also the person who at the time the proceedings commenced beneficially owned all the shares in the vessel. Such being the case the requirements of section 4(4) Cap. 6 have been complied with and in the circumstances the two motions are dismissed with costs."

This appeal was brought against the decision of the learned Judge. By a Respondents' notice, the Respondents sought to support the decision by asserting that for the additional reasons stated in the Respondents' notice, the vessel was beneficially owned as respects all shares by Enfield Shipping Corporation S.A. At the conclusion of the hearing of this appeal, we dismissed it with costs. We now give our reasons.

It is beyond dispute that in November 1977 Enfield Shipping Corporation S.A. as the owners of the vessel had appointed a Singapore Company, Ganry Lines Pte. Limited. ("Ganry Lines"), as the Operations Manager of the vessel "with effect from September 1, 1977 until cancelled". Ganry Lines were authorised to appoint agents and incur disbursements for the maintenance and operations of the vessel. One Richard Hwa was described as the "de facto Manager" of Enfield Shipping Corporation S.A. He was also the Principal shareholder and Managing Director of Ganry Lines.

The Respondents were ships' agents in India and in 1980 they were appointed by Ganry Lines as the general agents for the vessel in India. The Respondents were accordingly duly appointed agents of Enfield Shipping Corporation S.A. for all Indian ports. In that capacity, they had incurred the disbursements which they were now claiming. The said Richard Hwa was the principal party who had dealt with the Respondents in all agency matters.

On the other hand the Appellants sought to show that by a memorandum of sale dated April 15, 1980, Enfield Shipping Corporation S.A. had agreed to sell the vessel "as

is where is" for US\$145,000 to Barbury, a Panamanian Corporation and one of the Appellants. The sale was to take place on delivery in Singapore. It was alleged that Barbury had paid the purchase price and delivery had taken place on May 14, 1980 in Singapore when the vessel returned from India.

Having regard to the affidavit evidence, we are satisfied that the purported sale of the vessel by Enfield Shipping Corporation S.A. to Barbury was a device and a sham designed to defraud claimants such as the Respondents so that the vessel as a security was put out of their reach. The said Richard Hwa held himself out as the President of Barbury. His mother was also described as the President as well as the director. His wife was the secretary and director. Although Tan Han Tuan, who was apparently not a member of the family, was the treasurer and director, Tan's role was nominal. The evidence purporting to show the payment of the purchase price was most unsatisfactory. Most of the alleged payments were made before the Memorandum of Agreement was signed on April 15, 1980, a most unusual feature for which the Appellants' explanation was unacceptable. No delivery of the vessel had taken place on May 14, 1980 or at all. As late as July 12, 1980 a mate's receipt issued by the vessel's office still bore the seal of "Enfield Corporation". The Bill of Sale which was allegedly executed on April 15, 1980 and handed over to Barbury was neither notarised by a Notary Public in Taiwan nor legalised by the Panamanian Consul in Taiwan. The Appellants offered the excuse that there was no Panamanian Consul in Taiwan, which assertion was later proved to be false. What is even more incredible is the execution of a substitute Bill of Sale on August 13, 1980 before a Singapore Notary Public whilst the first motion was in progress and after the vessel had sunk a month earlier in Singapore following a collision.

We are entitled to look at the transactions and determine the true beneficial ownerships of the vessel: *The Aventicum*⁽²⁾ and *The Maritime Trader*⁽³⁾. The evidence amply confirm that Barbury did not carry the true face of a corporate *bona fide* purchaser and we find that Enfield Shipping Corporation S.A. was at all material times the beneficial owner of the vessel. For all these reasons, we agreed with the decision of the learned Judge to dismiss the motions.

Motions dismissed.

Solicitors: Allen & Gledhill; Selvadurai, Pala Krishnan & Partners.

THE "ASEAN PROMOTER";
UNITRADE LTD. v. M.V. "ASEAN PROMOTER",
"ASEAN PROGRESS", "ASEAN PROSPERITY",
"ASEAN VENTURE", OWNERS & ORS. INTERESTED

[O.C.J. (Abdul Wahab Ghows J.) November 18, 1981]
[Singapore - Admiralty in Rem No. 703 of 1979]

Shipping Law - Arrest of ship - Wrongful arrest - Ship arrested not property of person liable "in personam" in plaintiffs' claim against another ship - Meaning of "beneficially-owned".